

1 KEVIN SIMMONS (p-23096)

2 L.A.C.S-P C2-124

3 P.O. Box 4610

4 LANCASTER, CA 93539
 5 ACTING IN PROPER.

6
 7 UNITED STATES DISTRICT COURT
 8 CENTRAL DISTRICT OF CALIFORNIA

9
 10 KEVIN SIMMONS,
 11 PLAINTIFF,

12 v

13
 14 G. ARNETT, et al.,
 15 DEFENDANTS,

16 SGT. ROMO, NURSE M. LOPEZ
 17 DEFENDANTS,

CASE NO. 2:16-CV-02858 R-KES

PLAINTIFF'S SECOND AMENDED

COMPLAINT STATING EIGHTH

AMENDMENT EXCESSIVE FORCE, DELIBERATE

INDIFFERENCE, CRUEL UNUSUAL PUNISHMENT, AND

DEVIATION OF PROCEDURAL DUE PROCESS CLAIMS.

DATE FILED: APRIL 26, 2016

Judge: KAREN E. SCOTT

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 19 COMES NOW THE PLAINTIFF KEVIN SIMMONS, WITH HIS
 20 SECOND AMENDED COMPLAINT. ACTING IN PROPER.

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 22
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 24
 25 DATE: APRIL 15, 2018

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 27 Kevin Simmons
 28

1 KEVIN SIMMONS (p-23096)

2 L.A.C.S.p C2-1242

3 P.O. Box 4610

4 LANCASTER, CA, 93539
 5 ACTING IN PROPER.

6 UNITED STATES DISTRICT COURT
 7 CENTRAL DISTRICT OF CALIFORNIA
 8

9 KEVIN SIMMONS
 10 PLAINTIFF

CASE NO. 2:16-CV-02858 R-KES

11 PLAINTIFF'S SECOND AMENDMENT

12 COMPLAINT FOR EXCESSIVE FORCE,

13 V.

14 DELIBERATE INDIFFERENCE, CRUEL AND UNUSUAL
 15 PUNISH, DENIAL OF PROCEDURAL DUE PROCESS
 16 CLAIMS.

G. ARNETT et al

15 Sgt. ROMO, AND

16 NURSE M. LOPEZ,
 17 DEFENDANTS

DATE FILED: 4-26-2016

Judge: HONORABLE KAREN E. SCOTT.

18
 19 COMES NOW PLAINTIFF KEVIN SIMMONS, WITH HIS
 20 SECOND AMENDED COMPLAINT TO CONSOLIDATE
 21 DEFENDANT'S ARNETT, Sgt. ROMO AND NURSE M. LOPEZ.
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1 DEFENDANT G. ARNETT, WORKS AT LANCASTER PRISON CALIFORNIA
2 44750 60TH STREET WEST, LANCASTER, CA. 93539

3 AS THE C-4 Bld. GUN TOWER OFFICER.

4 THE DEFENDANT IS BEING SUED IN HIS INDIVIDUAL CAPACITY
5 WHILE ACTING UNDER COLOR OF LAW ASSIGNED TO C-4 Bld. GUN
6 TOWER ON 2ND. WATCH NOV. 28, 2013.

7 2.) DEFENDANT SGT. ROMO, WORKS AT LANCASTER PRISON CALIFORNIA
8 44750 60TH STREET WEST, LANCASTER, CA. 93539

9 AS THE C-FACILITY YARD SGT.

10 THE DEFENDANT IS BEING SUED IN HIS INDIVIDUAL CAPACITY
11 WHILE ACTING UNDER COLOR OF LAW ASSIGNED TO C-FACILITY YARD
12 SGT. ON 2ND. WATCH NOV. 28, 2013.

13 3.) DEFENDANT NURSE M. LOPEZ, WORKS AT LANCASTER PRISON CALIFORNIA
14 44750 60TH STREET WEST, LANCASTER, CALIF. 93539

15 AS THE C-FACILITY MEDICAL NURSE.

16 THE DEFENDANT IS BEING SUED IN HIS INDIVIDUAL CAPACITY
17 WHILE ACTING UNDER COLOR OF LAW ASSIGNED TO C-FACILITY MEDICAL
18 NURSE ON 2ND. WATCH NOV. 28, 2013.

19 1. DEFENDANT G. ARNETT, IS BEING SUED FOR \$1,000,000 PUNITIVE
20 DAMAGES AND \$500,000 COMPENSATORY DAMAGES = \$1,500,000.

21 2. DEFENDANT SGT. ROMO, IS BEING SUED FOR \$750,000 PUNITIVE
22 DAMAGES AND \$250,000 COMPENSATORY DAMAGES = \$1,000,000.

23 3. DEFENDANT NURSE M. LOPEZ, IS BEING SUED FOR \$750,000
24 PUNITIVE DAMAGES AND \$250,000 FOR COMPENSATORY DAMAGES
25 = \$1,000,000

26 LAW SUIT TOTALED AT \$3,500,000

THE STATING OF EIGHTH AMENDMENT

CLAIM OF EXCESSIVE FORCE

ON NOV. 28, 2013

PLAINTIFF ASSERTS A CLAIM AGAINST DEFENDANT G. ARNETT, FOR EXCESSIVE FORCE IN VIOLATION OF HIS EIGHTH AMENDMENT RIGHTS TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT, ARISING FROM BEING PHYSICALLY ASSAULTED.

PLAINTIFF WAS APPROACHED BY A MEXICAN INMATE BY THE NAME OF MURRILLO, INMATE MURRILLO, SUCKER PUNCHED THE PLAINTIFF IN THE SIDE OF HIS HEAD AND AT THE SAME TIME DEFENDANT G. ARNETT, FIRED HIS FIRST SHOT HITTING THE PLAINTIFF IN HIS LEFT LEG, THE PLAINTIFF WAS ALREADY DAZED FROM THE PUNCH AND THE ROUND FROM THE SHOT KNOCKED THE PLAINTIFF TO HIS KNEE'S. WHILE INMATE MURRILLO, CONTINUED TO PUNCH THE PLAINTIFF ^{IN} THE SIDE OF THE FACE AND HEAD, IT IS CLEAR THAT THE PLAINTIFF IS BEING VICTIMIZED BY INMATE MURRILLO, BECAUSE WHEN DEFENDANT G. ARNETT, FIRED HIS FIRST ROUND IT HIT PLAINTIFF IN THE LOWER LEFT LEG BREAKING IT IN HALF AND PUTTING PLAINTIFF DOWN ON HIS HANDS AND KNEE'S.

AS INMATE MURRILLO, CONTINUES TO PUNCH THE PLAINTIFF HARD DEFENDANT ARNETT, FIRES A SECOND ROUND HITTING THE PLAINTIFF A SECOND TIME WHILE HE WAS DOWN ON HIS KNEE'S AND BEING REPEATEDLY PUNCHED IN THE FACE AND HEAD BY INMATE MURRILLO, WITH INMATE MURRILLO, MEXICAN BUDDIES CHANTING ON THE GROUND FLOOR, THROW HIS SS OFF THE TIER!

THIS INMATE BEING TWICE THE PLAINTIFF SIZE AND THE PLAINTIFF FEELING WEAK, THE PLAINTIFF WRAP HIS ARMS

1 AROUND INMATE MURRILLO, LEGS AND PRESSED MY FACE INTO
 2 MURRILLO'S, LEGS TIGHT AS I COULD, CAUSE THE PLAINTIFF NOT BEING
 3 SURE HOW MANY MORE PUNCHES I COULD STAND.
 4 NOW THE EVENT IS STARTING TO CLEARLY SHOW AND ESTABLISH
 5 A VIOLATION OF THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE
 6 OF THE FEDERAL CONSTITUTION'S EIGHTH AMENDMENT BASED ON
 7 EXCESSIVE USE OF FORCE BY THIS PRISON OFFICER.
 8 INMATE MURRILLO, CONTINUES PUNCHING THE PLAINTIFF, THE
 9 PUNCHES ARE NOW LANDING ON THE BACK OF MY HEAD AND
 10 NECK. DEFENDANT ARNETT, FIRE'S A THIRD ROUND THIS TIME
 11 HITTING ME ON THE RIGHT SIDE OF MY BUTTOCKS.
 12 DEFENDANT ARNETT, AS WELL AS PRISON OFFICERS WORKING UNDER
 13 THE COLOR OF THE LAW HAVE A SWORN DUTY TO PROVIDE ALL
 14 INMATES A SAFE AND NONE "DANGEROUS-HAZARDOUS" LIVING
 15 CONDITION. THIS SWORN DUTY IS ALSO TO PROTECT THE PLAINTIFF
 16 FROM BEING ASSAULTED BY OTHER INMATES. IN WHICH THIS
 17 PRISON OFFICER WHILE ACTING UNDER THE COLOR OF LAW WATCH
 18 ED INMATE MURRILLO TRAVEL FROM ONE SIDE OF THE BUILDING
 19 WHILE HIS NOSE AND FACE WAS BLEEDING AND WITHOUT
 20 WARNING WALK UP TO THE PLAINTIFF AS IF HE WAS PASSING
 21 BY AND WITHOUT WARNING SUCKER PUNCH THE PLAINTIFF ASSAULTING
 22 HIM WITH A PUNCH HARD ENOUGH TO DAZE THE PLAINTIFF AND
 23 INSTEAD OF TAKING ACTIONS TO PROTECT THE PLAINTIFF FROM
 24 THE REPEATEDLY PUNCHES OF ASSAULT THE CONTEMPORARY STANDARDS
 25 OF DECENCY WAS VIOLATED WHEN THE DEFENDANT ARNETT,
 26 RELOADED HIS 40MM LAUNCHER AND MALICIOUSLY AND SADISTIC-
 27 ALLY USE EXCESSIVE FORCE BY AIMING AND FIRING AT THE
 28 PLAINTIFF SECOND TIME WHEN THE PLAINTIFF WAS CLEARLY

1 THE VICTIM.

2 THE PLAINTIFF UNABLE TO STAND OR DEFEND HIMSELF, INMATE
 3 MURRILLO, CONTINUES TO PUNCH THE PLAINTIFF IN THE HEAD
 4 AND FACE AREA. THE PLAINTIFF ON HIS KNEES ATTEMPTING TO
 5 COVER HIS FACE AND HEAD FROM THE PUNCHES OF MURRILLO,
 6 WITH THE DEFENDANT ARNETT REPEATEDLY RELOADING HIS
 7 WEAPON AND SHOOTING AT THE PLAINTIFF WHO IS THE VICTIM.
 8 STANDARDS OF BEING TREATED WITH DECENCY BY THE DEFENDANT
 9 ARNETT, FELL WELL BELOW HUMAN, INMATE MURRILLO IS THE
 10 AGGRESSOR AND NOT ONE TIME HAS HE BEEN SHOT OR SHOT AT,
 11 EVERY SHOT FIRED THE PLAINTIFF FELT IT. AFTER DEFENDANT
 12 ARNETT HAD FIRED AND SHOT THE PLAINTIFF (3) THREE TIMES AND
 13 OFFICERS WERE IN THE BUILDING NOW RESPONDING TO THE ALARM
 14 DEFENDANT ARNETT, YELLED OUT THE WINDOW GET DOWN!
 15 THE ABOVE STATED FACT OF COGNIZABLE LEGAL THEORY AND
 16 I MUST REPEAT "ACTUAL FACT" OF DEFENDANT ARNETT
 17 UNNECESSARY AND WANTON INFLICTION OF PAIN ON THE PLAINTIFF
 18 BY LOADING AIMING AND FIRING HIS WEAPON A 40 MM RIGT GUN
 19 AND HITTING THE PLAINTIFF NOT ONCE! NOT TWICE! BUT (3)
 20 THREE TIMES AND THE PLAINTIFF BEING THE VICTIM OF THE
 21 BEATING BY MURRILLO IS SURELY A 8TH AMENDMENT
 22 CLAIM SUFFICIENT UNDER THE COGNIZABLE LEGAL THEORY
 23 OF BALISLREI V. PACIFICA POLICE DEPT. 901 F.2d 696, 699 (9TH CIR. 1990)

24 25 SECOND CAUSE OF ACTION

26 DEFENDANT SGT. ROMO, VIOLATED PLAINTIFF'S EIGHTH AMENDMENT
 27 RIGHTS TO BE FREE OF UNJUSTIFIED "EXCESSIVE FORCE", "CRUEL
 28 AND UNUSUAL PUNISHMENT".

ON 11-28-2013

1 I PLAINTIFF KEVIN SIMMONS, WAS THE VICTIM OF A ASSAULT
2 BY ANOTHER INMATE AND CORRECTIONAL OFFICER G. ARNETT,
3 DEFENDANT ARNETT, SHOT PLAINTIFF (3) THREE TIMES.

4 THE FIRST SHOT BROKE PLAINTIFF'S LEG IN HALF (TIBIA AND FIBULA)
5 MAKING IT IMPOSSIBLE FOR PLAINTIFF TO STAND OR WALK.

6 SGT. ROMO, WAS THE FIRST SGT. TO ARRIVE ON THE SCENE. AS
7 SGT. ROMO, ENTERED C4 BLD. HE SCREAMED AT DEFENDANT
8 ARNETT, WHAT THE F---! IS ALL OF THESE INMATES DOING
9 OUT OF THEIR CELL? LOCK THESE M-----F-----! UP RIGHT
10 NOW. "HE FAILED TO TAKE THE NAMES OF THE INMATES ON THE
11 TIER". SGT. ROMO, ORDERED THE C/O'S TO DRAG THE PLAINTIFF
12 DOWN THE TIER AND THEY COMPLIED. "HE DIDN'T CARE ABOUT
13 THE PLAINTIFF'S LEG HANGING IN HALF." SGT. ROMO, ORDERED
14 THE C/O'S TO DRAG PLAINTIFF DOWN THE STAIRS BUT
15 SGT. SEBOK, INTERVENED AND DEMANDED THAT I BE
16 PLACED ON A GURNEY. SGT. SEBOK, ASKED THE PLAINTIFF HOW
17 DID HIS PANTS GET WET AND PLAINTIFF RESPONDED THAT
18 "I SAT IN THE WATER BY THE SHOWER".

19 SGT. ROMO, INSTRUCTED DEFENDANT NURSE LOPEZ, TO CHANGE
20 (NO COMMENT) TO ("I HURT MY LEG WHEN I SLIPPED IN
21 WATER.") I MADE SGT. ROMO, AWARE OF THE FACT THAT
22 I WAS ALSO SHOT ON MY BACK SIDE. MY JACKET AND
23 SHIRT WAS REMOVED AND SGT. ROMO, INSTRUCTED
24 DEFENDANT NURSE LOPEZ, THAT SHE WAS WASTING HER TIME
25 AND THAT I WASN'T SHOT. SGT. ROMO, ORDERED NURSE
26 LOPEZ, TO FILE A FALSE 7219 MEDICAL REPORT. SGT. ROMO,
27 COERCED DEFENDANT NURSE LOPEZ, INTO COVERING UP THE
28 FACTS THAT DEFENDANT ARNETT, SHOT THE PLAINTIFF (3)

1 TIMES DELIBERATELY WITH THE INTENT TO CAUSE HARM.

2 SGT. ROMO, ALSO HAS AND HAD HIS ACTIONS ON VIDEO TAPE,
3 AND NOW THAT TAPE CAN'T BE LOCATED. SGT. ROMO,
4 PARTICIPATED IN THIS INCIDENT FROM START TO FINISH
5 AND NOW THERE IS NO RECORD OF HIS ACTIONS OR
6 PARTICIPATION AT ALL. SGT. ROMO, GAVE ORDERS TO INMATES
7 AS WELL AS CORRECTIONAL OFFICERS, BUT THE PLAINTIFF IS
8 BEING DENIED THE FACTS THAT SGT. ROMO, WAS PRESENT
9 FOR ANY PART OF THE INCIDENT.

10 "DENIAL OF PROCEDURAL DUE PROCESS", SGT. ROMO, FAILED TO
11 REPORT THE EXCESSIVE FORCE OF DEFENDANT ARNETT, AND
12 WENT AS FAR AS COVERING UP THE (3) GUN SHOT WOUNDS
13 FOR DEFENDANT ARNETT. SGT. ROMO, HAS A DUTY TO
14 REPORT HIS OBSERVATION AND PARTICIPATION IN PLAINTIFFS
15 EXCESSIVE FORCE CLAIM.

16 THIRD CAUSE OF ACTION

17 "INADEQUATE MEDICAL CARE".

18 "DELIBERATE INDIFFERENCE".

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21 DEFENDANT NURSE M. LOPEZ, VIOLATED PLAINTIFF'S EIGHTH AND
22 FOURTEENTH AMENDMENT RIGHTS TO BE FREE OF CRUEL AND
23 UNUSUAL PUNISHMENT.

24 ON 11-28-2013, AT APPROXIMATELY 10:05
25 A.M. I THE PLAINTIFF KEVIN SIMMONS, WAS THE VICTIM
26 OF A ASSAULT BY ANOTHER INMATE AND CORRECTIONAL
27 OFFICER G. ARNETT. OFFICER G. ARNETT, SHOT PLAINTIFF (3) TIMES.
28 THE FIRST SHOT BROKE PLAINTIFF'S (Tibia AND Fibula) COMPLETELY

1 IN HALF CAUSING PLAINTIFF'S LEFT LEG TO FLOP/FOLD INTO TWO
 2 PIECES. DEFENDANT NURSE M. LOPEZ, LVN WAS THE TREATING
 3 NURSE. NURSE LOPEZ, ASKED THE PLAINTIFF WHAT HAPPEND TO
 4 CAUSE THE INJURY AND PLAINTIFF RESPONDED (NO COMMENT).
 5 PLAINTIFF NEVER REFUSED ANY TREATMENT. SGT. ROMO, INSTRUCTED
 6 NURSE LOPEZ, TO CHANGE THE PLAINTIFF'S STATEMENT FROM
 7 (NO COMMENT) TO ("I HURT MY LEG WHEN I SLIPPED IN
 8 WATER"). PLAINTIFF INFORMED SGT. ROMO, AND NURSE LOPEZ,
 9 THAT HE WAS SHOT ON HIS BACK SIDE. NURSE LOPEZ, HAD THE
 10 PLAINTIFF'S JACKET AND SHIRT REMOVED. SGT. ROMO, TOLD NURSE
 11 LOPEZ, THAT SHE WAS WASTING HER TIME AND THAT THE
 12 PLAINTIFF WASN'T SHOT.

13 NURSE LOPEZ, THEN COMPLETED THE 7219 MEDICAL FORM WITH
 14 FALSE STATEMENTS BY DOING THE FOLLOWING; 1. ON INJURIES FOUND
 15 SHE CIRCLED NUMBER 11 PAIN IN LOWER LEFT LEG, INSTEAD
 16 OF NUMBER 3 BROKEN BONES. 2. SHE FAILED TO TREAT
 17 PLAINTIFF FOR GUN SHOT WOUNDS TO HIS RIGHT THIGH AND
 18 BUTTOCK, WHICH WAS BLEEDING. 3. SHE FALSIFIED THE 7219
 19 MEDICAL FORM BY SAYING THAT THE PLAINTIFF HAD NO
 20 INJURIES ON HIS BACK SIDE.

21 ON 11-28-2013, PLAINTIFF WENT TO PALMDALE REGIONAL HOSPITAL
 22 TO HAVE SURGERY ON THE BROKEN BONES IN HIS LEFT LEG THAT
 23 NURSE LOPEZ, TRIED TO DOWN PLAY.

24 ON 12-1-2013, WHILE BEING TREATED BY THE PALMDALE SKIN
 25 ASSESSMENT (3) DAY AFTER BEING SHOT BY DEFENDANT
 26 G. ARNETT, THE MEDICAL STAFF HAD TO PRY THE PLAINTIFF'S
 27 UNDERWARE AND ATHLETIC SHORTS OFF OF HIS BLOODY THIGH
 28 AND BUTTOCK. THE REFUSAL BY NURSE LOPEZ, TO TREAT PLAINTIFF'S

1 WOUNDS CAUSED HIM "UNNECESSARY AND WANTON INFLICTION
2 OF PAIN."

3 PLAINTIFF UNDERSTAND THAT NURSE LOPEZ, ONLY DID AS
4 SGT. ROMO, INSTRUCTED HER TO DO, BUT AS A MEDICAL STAFF
5 SHE HAS A OATH TO UPHOLD AND SGT. ROMO, IS NOT HER
6 SUPERVISOR.

7 FOR APPROXIMATELY (3) HOURS THE PLAINTIFF WAS PUT THROUGH
8 EXTREM PAIN AND SUFFERING AS THE (3) DAY OLD BLOODY
9 UNDERWARE WAS PRIED FROM HIS GUN SHOT WOUNDS THAT
10 NURSE LOPEZ, REFUSED TO TREAT.

11 THE 7219 MEDICAL REPORT PREPARED BY NURSE LOPEZ, WAS
12 FALSIFIED TO COVER UP DEFENDANT'S ARNETT, SHOOTING PLAINTIFF
13 PALMDALE REGIONAL HOSPITAL CONTRADICTS EVERY WORD THAT
14 NURSE LOPEZ, STATED IN HER REPORT.

15 DR. HA, ALSO ORDERED FOR THE PLAINTIFF'S DRESSINGS TO BE CLEANED
16 AND CHANGED ON A REGULAR BASIS ONCE HE RETURNED BACK
17 TO THE PRISON FROM THE HOSPITAL.

18 "PLEADING STANDARD"

19 SECTION 1983 "PROVIDES A CAUSE OF ACTION FOR THE DEPRIVATION
20 OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION
21 AND LAWS OF THE UNITED STATES." WILDER V. VIRGINIA HOSPITAL ASSN., 496
22 U.S. 498, 503 (1990) (QUOTING 42 U.S.C. § 1983). SECTION 1983 IS NOT ITSELF
23 A SOURCE OF SUBSTANTIVE RIGHTS, BUT MERELY PROVIDES A METHOD FOR
24 VINDICATING FEDERAL RIGHTS CONFERRED ELSEWHERE. GRAHAM V. CONNER,
25 490 U.S. 386, 393-94 (1989).

26 TO STATE A CLAIM UNDER § 1983, A PLAINTIFF MUST ALLEGE TWO
27 ESSENTIAL ELEMENTS: (1) THAT A RIGHT SECURED BY THE CONSTITUTION
28 OR LAWS OF THE UNITED STATES WAS VIOLATED AND (2) THAT THE

1 ALLEGED VIOLATION WAS COMMITTED BY A PERSON ACTING UNDER THE
 2 COLOR OF STATE LAW. SEE WEST V. ATKINS, 489 U.S. 42, 48 (1988);
 3 KETCHUM V. ALAMEDA COUNTY, 811 F.2d 1243, 1245 (9TH CIR. 1987)
 4 THE EIGHTH AMENDMENT PROTECTS PRISONERS FROM HUMANE METHODS
 5 OF PUNISHMENT AND FROM HUMANE CONDITIONS OF CONFINEMENT.
 6 MORGAN V. MORGENSEN, 465 F.3d 1041 (9TH CIR. 2006). ALTHOUGH PRISON
 7 CONDITIONS MAY BE RESTRICTED AND HARSH, PRISON OFFICIALS MUST PROVIDE
 8 PRISONER WITH FOOD, CLOTHING, SHELTER, SANITATION, MEDICAL CARE AND
 9 PERSONAL SAFETY. FARMER V. BRENNAN, 511 U.S. 825, 832-33 (1994)
 10 (CITATION OMITTED). PRISON OFFICIALS HAVE A DUTY TO TAKE REASONABLE
 11 STEPS TO PROTECT FROM PHYSICAL ABUSE. FARMER, 511 U.S. AT 833.
 12 PLAINTIFF HAS CLEARLY BEEN VICTIMIZED BY DEFENDANTS ARNETT, SGT.
 13 ROMO, AND NURSE LOPEZ, TO ESTABLISH A VIOLATION OF THIS DUTY,
 14 THE PRISONER MUST ESTABLISH THAT PRISON OFFICIALS WERE "DELIBERATELY
 15 INDIFFERENT" TO SERIOUS THREATS TO THE INMATES SAFETY. Id. AT 834.
 16 "MERE NEGLIGENCE IS NOT SUFFICIENT TO ESTABLISH LIABILITY. FROST V.
 17 AGNOS, 152 F.3d 1124, 1128 (9TH CIR. 1998).
 18 RATHER, A PLAINTIFF MUST SET FORTH FACTS TO SHOW THAT DEFENDANT
 19 KNEW OF, BUT DISREGARDED, AN EXCESSIVE RISK TO INMATE SAFETY.
 20 FARMER, 511 U.S. AT 837. THAT IS, "THE OFFICIAL MUST BOTH BE AWARE
 21 OF FACTS FROM WHICH THE INFERENCE COULD BE DRAWN THAT A
 22 SUBSTANTIAL RISK OF SERIOUS HARM EXISTS, AND HE MUST ALSO DRAW
 23 THE INFERENCE." Id. PLAINTIFF STATES THAT DEFENDANTS ARNETT, SGT.
 24 ROMO AND NURSE LOPEZ, HAD KNOWLEDGE OF THE FACT THAT
 25 PLAINTIFF WAS SHOT (3) TIMES BY DEFENDANT ARNETT, BUT
 26 FAILED TO ACT IN A PROFESSIONAL MANNER SUCH AS
 27 PROVIDING THE PROPER MEDICAL CARE. "INADEQUATE MEDICAL CARE."
 28 SGT. ROMO, COERCED NURSE LOPEZ, TO DEPRIVE PLAINTIFF OF

1 HIS RIGHTS TO BE TREATED FOR THE (3) GUN SHOT WOUNDS THAT
 2 HE RECEIVED AT THE HANDS OF DEFENDANT ARNETT. A CLAIM OF
 3 MEDICAL INDIFFERENCE REQUIRES (1) A SERIOUS MEDICAL NEED,
 4 AND (2) A "DELIBERATELY INDIFFERENT" RESPONSE BY DEFENDANT.
 5 JETT V. PENNER, 439 F.3d 1091, 1096 (9TH CIR. 2006).

6 A SERIOUS MEDICAL NEED MAY BE SHOWN BY DEMONSTRATING
 7 THAT "FAILURE TO TREAT A PRISONER'S CONDITION COULD RESULT IN
 8 FURTHER SIGNIFICANT INJURY OR THE 'UNNECESSARY AND WANTON
 9 INFLECTION OF PAIN'". Id.; SEE ALSO, MCGUCKIN V. SMITH, 974 F.2
 10 1050-1059-60 (9TH CIR. 1992). THE DELIBERATE INDIFFERENCE STANDARD
 11 IS MET BY SHOWING (a) A PURPOSEFUL ACT OR FAILURE TO RESPOND TO
 12 A PRISONER'S PAIN OR POSSIBLE MEDICAL NEED AND (b) HARM CAUSED
 13 BY THE INDIFFERENCE.

14 HERE THE PLAINTIFF WAS SHOT WITH THE 40 MM. (3) TIMES, THE
 15 FIRST SHOT BROKE HIS LEG COMPLETELY IN HALF AND THE
 16 SECOND SHOT TOOK A CHUNK OF SKIN OFF THE PLAINTIFF'S
 17 RIGHT THIGH AND THE THIRD SHOT TOOK A CHUNK OF SKIN
 18 OFF HIS RIGHT BUTTOCK, DEFENDANT SGT. ROME ORDERED
 19 NURSE LOPEZ, TO DISREGARD MY INJURIES AND PLAINTIFF
 20 SPENT (3) DAYS BLEEDING FROM THE RIGHT THIGH AND BUTTOCK.
 21 PLAINTIFF'S MEDICAL RECORDS SUPPORTS CLAIM.

22 "LINKAGE". UNDER § 1983, PLAINTIFF MUST DEMONSTRATE THAT
 23 EACH NAME DEFENDANT PERSONALLY PARTICIPATED IN THE
 24 DEPRIVATION OF HIS RIGHTS. Iqbal, 556 U.S. 662, 676-77 (2009);
 25 SIMMONS V. NAVAJO COUNTY, ARIZ. 609 F.3d 1011, 1020-21 (9TH CIR. 2010);
 26 EWING V. CITY OF STOCKTON, 583 F.3d 1218, 1235 (9TH CIR. 2009);
 27 JONES V. WILLIAMS, 297 F.3d 930, 934 (9TH CIR. 2002). LIABILITY
 28 MAY NOT BE IMPOSED ON SUPERVISORY PERSONNEL UNDER

THE THEORY OF RESPONDANT SUPERIOR, AS EACH DEFENDANT IS ONLY LIABLE FOR HIS OR HER OWN MISCONDUCT. IGBAL, 556 U.S. AT 676-77; EWING, 588 F.3d AT 1235. SUPERVISOR MAY ONLY BE HELD LIABLE IF THEY "PARTICIPATED IN OR DIRECTED THE VIOLATIONS, OR KNEW OF THE VIOLATION AND FAILED TO ACT TO PREVENT THEM". TAYLOR V. LIST, 880 F.2d 1040, 1045 (9TH CIR. 1989); ACCORD STARR V. BACA, 652 F.3d 1202, 1205-08 (9TH CIR. 2011); CORALES V. BENNETT, 567 F.3d 554, 570 (9TH CIR. 2009); PRESCHOOLER II V. CLARK CNTY. SCH. Bd. OF TRS., 479 F.3d 1175, 1182 (9TH CIR. 2007); HARRIS V. RODERICK, 126 F.3d 1189, 1204 (9TH CIR. 1997). EVERY PUNCH THAT PLAINTIFF RECEIVED FROM HIS ATTACKER AND EVERY SHOT PLAINTIFF RECEIVED FROM DEFENDANT ARNETT, PUTS DEFENDANT'S SGT. ROMO, AND NURSE LOPEZ, AT THE CENTER OF THE LINKAGE BOTH SGT. ROMO AND NURSE LOPEZ DESTROYED KEY EVIDENCE IN PLAINTIFF'S CASE.

REQUEST FOR RELIEF

THE LOSS OF CONSTITUTIONAL RIGHTS EVEN FOR A SHORT PERIOD OF TIME SUCH AS FIVE MINUTES CONSTITUTES IRREPARABLE INJURY IN MORE WAY THEN ONE. ELROD V. BURNS, 427 U.S. 347, 373 (1976) DEERFIELD MEDICAL CENTER V. CITY OF DEERFIELD BEACH, 661 F.2d 328, 338 (5TH CIR. 1981).

PLAINTIFF NOW HAS A LIFE TIME INJURY FROM THE EXCESSIVE FORCE OF THE DEFENDANT'S AND PLAINTIFF NOW BELIEVE THAT HE IS ENTITLED TO THE FOLLOWING RELIEF; DEFENDANT SGT. ROMO, \$1,000,000
 DEFENDANT NURSE LOPEZ, \$1,000,000
 DEFENDANT ARNETT, \$1,500,000
 FOR MY LIFE LONG INJURY, PAIN AND SUFFERING, AND PUNITIVE DAMAGES.

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DATE: 4-15-2018

Kevin Simmons

DECLARATION

I UNDERSTAND THAT A FALSE STATEMENT OR
ANSWER TO ANY QUESTIONS IN THIS DECLARATION
WILL SUBJECT ME TO PENALTIES OF PERJURY.

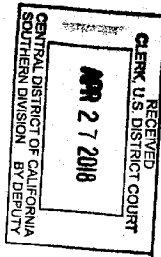
Kevin Simmons

I KEVIN SIMMONS, DECLARE UNDER PENALTY OF
PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

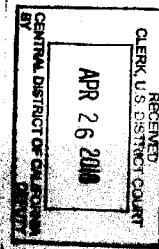
DATE: APRIL 15, 2018

Kevin Simmons

KEVIN SIMMONS (P-23096)
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KCS

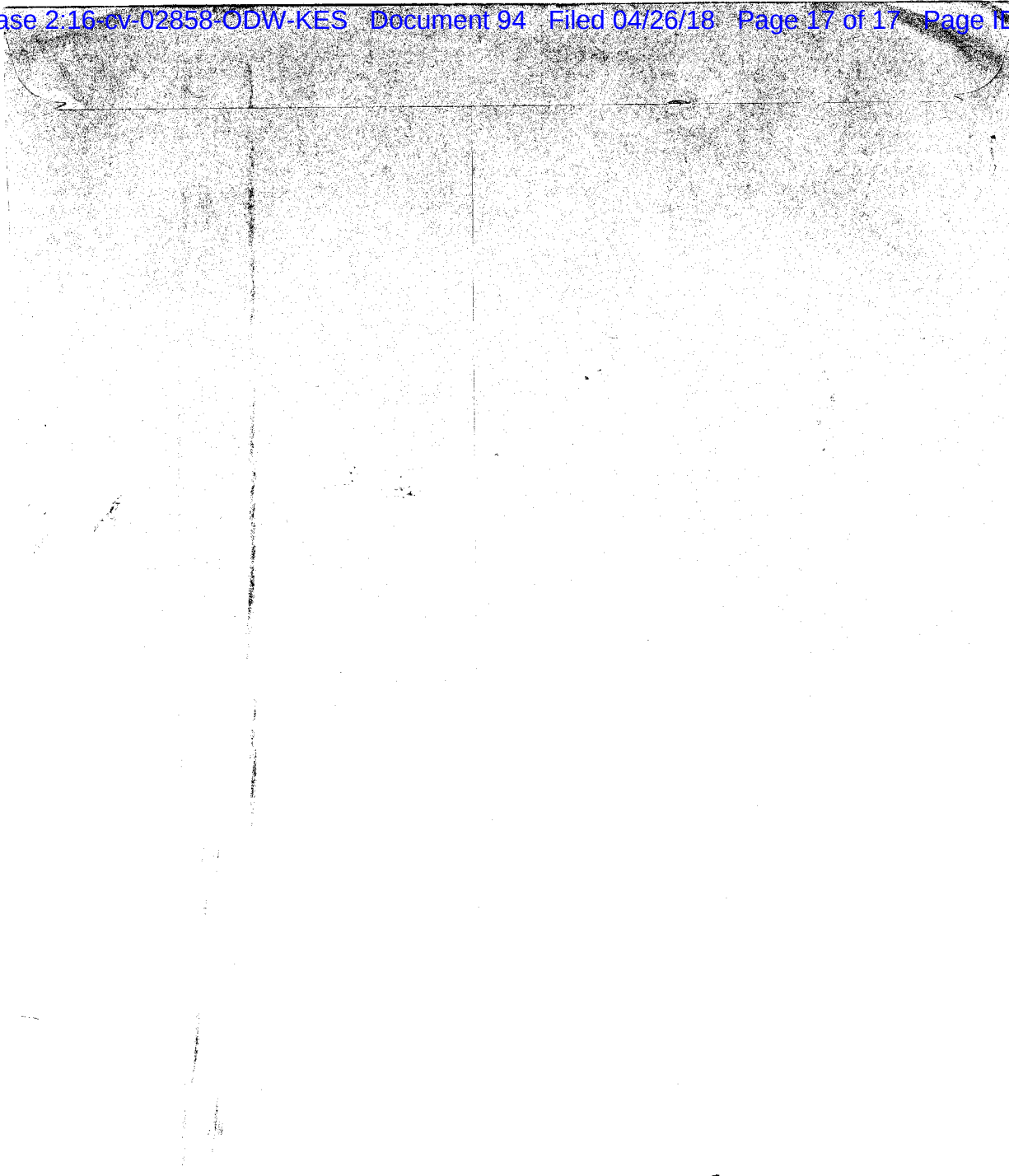


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